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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH PAUL AREIAS,

Defendant and Appellant.

G051751

(Super. Ct. No. 13CF0005)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Vickie Hix, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed as modified.

Robert V. Vallandigham, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Christine Bergman and Annie Featherman Fraser, Deputy Attorneys General, for Plaintiff and Respondent.

Joseph Paul Areias appeals from a postjudgment order granting his petition to designate a prior felony conviction as a misdemeanor under The Safe Neighborhoods and Schools Act (Proposition 47). (Pen. Code, § 1170.18; all further statutory references are to the Penal Code unless otherwise stated.)

Areias argues the court erred by not applying his excess custody credits to (1) the one-year parole period provided for in section 1170.18, subdivision (d), and (2) any outstanding fines and fees. The first issue was recently resolved against him by our Supreme Court in *People v. Morales* (2016) 63 Cal.4th 339 (*Morales*). As to the second issue, we conclude the court must apply excess custody credits to qualifying fines and fees, and we modify the judgment accordingly. As modified, the judgment is affirmed.

### **FACTS AND PROCEDURAL BACKGROUND**

In March 2013, Areias pleaded guilty to felony possession of methamphetamine and misdemeanor possession of drug paraphernalia. The court sentenced Areias to three years for possession of methamphetamine and suspended sentence for possession of drug paraphernalia.

The court awarded Areias 182 presentence custody credits (91 actual, 91 conduct), and ordered the following fines and fees: (1) \$240 mandatory state restitution fine (§ 1202.4, subd. (b)); (2) \$240 postrelease community supervision (PRCS) revocation restitution fine (§ 1202.45); (3) \$40 court operations fee (§ 1465.8); (4) \$50 laboratory analysis fee (Health & Saf. Code, § 11372.5); (5) \$30 criminal conviction assessment fee (Gov. Code, § 70373, subd. (a)(1)); and (6) \$75 DNA administration fee (Gov. Code, § 76104.6).

In 2015, Areias petitioned the court for relief under Proposition 47. The court granted the petition under section 1170.18, subdivision (b). However, the court declined to exercise its discretion and relieve Areias from the one-year parole period specified in section 1170.18, subdivision (d) due to Areias's "very significant prior history going back . . . in Orange County to 1994. . . ."

The court resentenced Arieas to 18 months consisting of one-year for misdemeanor possession of methamphetamine, plus a consecutive six-month term for misdemeanor possession of paraphernalia. The court awarded 553 actual days, plus 553 conduct days, for a total of 1,106 days custody credits (§§ 2900.5, 4019), credited 545 of those days against the 18-month sentence, and again imposed the same fines and fees.<sup>1</sup> Arieas filed a timely notice of appeal.

### **DISCUSSION**

Arieas has 561 days of excess custody credits. He first asserts the court should have applied those excess credits to the one-year parole period imposed under section 1170.18, subdivision (d). As noted, this claim was recently rejected in *Morales*, *supra*, 63 Cal.4th at pages 404-410.

Arieas next argues the court should have applied the excess custody credits to his fines and fees. We concluded in *People v. Armogeda* (2015) 240 Cal.App.4th 1039, review granted December 9, 2015, S230374, excess custody credits must be applied to any eligible fines and fees. We still hold this view.

The Attorney General, pointing to the 2014 version of section 2900.5, subdivision (a), asserts excess presentence custody credits may be applied to “punitive fines and fees,” but not restitution fines. However, Arieas is entitled to sentencing under the version of the statute enforce at the time he committed his crimes under constitutional ex post facto principles. (*People v. Morris* (2015) 242 Cal.App.4th 94, 102-103 (*Morris*) [defendant is entitled to apply excess custody credits to his restitution fine under § 2900.5, subd. (a) in effect at the time of his offense].)

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<sup>1</sup> The court’s sentencing minute order erroneously reflects a custody credit award of 273 actual days, plus 272 conduct days, for a total of 545 days custody credit. We direct the court to correct its April 3, 2015, minute order nunc pro tunc to properly reflect the court’s oral pronouncement of judgment. (*People v. Gabriel* (2010) 189 Cal.App.4th 1070, 1073.)

At the time of the offenses in this case, section 2900.5, subdivision (a) stated, “In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody . . . all days of custody of the defendant, including days served as a condition of probation in compliance with a court order, credited to the period of confinement pursuant to Section 4019, shall be credited upon his or her term of imprisonment, or credited to any fine on a proportional basis, including, but not limited to, base fines and *restitution fines*, which may be imposed . . . .” (Italics added.)

Under this version of section 2900.5, subdivision (a), Areias is entitled to have his excess custody credits applied to reduce the \$240 restitution fine (*Morris, supra*, 242 Cal.App.4th at p. 100), and the \$240 parole/PRCS revocation restitution fines (*People v. Callejas* (2000) 85 Cal.App.4th 667, 670). Because the \$50 criminal laboratory analysis fee (*People v. Sharret* (2011) 191 Cal.App.4th 859, 869), and the \$75 DNA administration fee (*People v. Batman* (2008) 159 Cal.App.4th 587, 591) are considered punitive in nature, Areias is also entitled to have excess custody credits applied to both. Areias receives a minimum of \$30 per day each day he spends in custody (§ 2900.1). Consequently, his 561 days excess custody credits exceed the sum of his punitive fines and fees. We will modify the judgment, accordingly.

On the other hand, excess custody credits may not be applied to nonpunitive assessments and fees, including the \$40 court security fee (*People v. Wallace* (2004) 120 Cal.App.4th 867, 875-876), and the \$30 criminal conviction fee assessment (*People v. Castillo* (2010) 182 Cal.App.4th 1410, 1413-1414).

### **DISPOSITION**

The court's postjudgment order granting the petition for recall of felony is modified by deeming the \$240 mandatory restitution fine, the \$240 parole/PRCS revocation restitution fines, the \$50 criminal laboratory analysis fee, and the \$75 DNA administration fee to have been satisfied in full by Areias's excess custody credits. As modified, the judgment is affirmed.

THOMPSON, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.